

## Merit Systems Protection Board

## §1201.125

number of the party or the party's representative.

(d) *Method of filing and service.* Filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(e) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in §1201.5 of this part are satisfied.

[62 FR 48451, Sept. 16, 1997, as amended at 68 FR 59863, Oct. 20, 2003]

### § 1201.123 Contents of complaint.

(a) If the Special Counsel determines that the Board should take any of the actions listed below, he or she must file a written complaint in accordance with §1201.122 of this part, stating with particularity any alleged violations of law or regulation, along with the supporting facts.

(1) Action to discipline an employee alleged to have committed a prohibited personnel practice, 5 U.S.C. 1215(a)(1)(A);

(2) Action to discipline an employee alleged to have violated any law, rule, or regulation, or to have engaged in prohibited conduct, within the jurisdiction of the Special Counsel under 5 U.S.C. 1216 (including an alleged violation by a Federal or District of Columbia government employee involving political activity prohibited under 5 U.S.C. 7324), 5 U.S.C. 1215(a)(1)(B), 1216(a), and 1216(c);

(3) Action to discipline a State or local government employee for an alleged violation involving prohibited political activity, 5 U.S.C. 1505; or

(4) Action to discipline an employee for an alleged knowing and willful refusal or failure to comply with an order of the Board, 5 U.S.C. 1215(a)(1)(C).

(b) The administrative law judge to whom the complaint is assigned may order the Special Counsel and the responding party to file briefs, memoranda, or both in any disciplinary action complaint the Special Counsel brings before the Board.

### §1201.124 Rights; answer to complaint.

(a) *Responsibilities of Clerk of the Board.* The Clerk of the Board shall furnish a copy of the applicable Board regulations to each party that is not a Federal, State, or local government agency and shall inform such a party of the party's rights under paragraph (b) of this section and the requirements regarding the timeliness and content of an answer to the Special Counsel's complaint under paragraphs (c) and (d), respectively, of this section.

(b) *Rights.* When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1215(a)(1), the employee has the right:

(1) To file an answer, supported by affidavits and documentary evidence;

(2) To be represented;

(3) To a hearing on the record before an administrative law judge;

(4) To a written decision, issued at the earliest practicable date, in which the administrative law judge states the reasons for his or her decision; and

(5) To a copy of the administrative law judge's decision and subsequent final decision by the Board, if any.

(c) *Filing and default.* A party named in a Special Counsel disciplinary action complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a party fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the administrative law judge's decision.

(d) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

### §1201.125 Administrative law judge.

(a) An administrative law judge will hear a disciplinary action complaint brought by the Special Counsel.